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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1088

THERESA LEAH THOMPSON, ET AL.,
Petitioner,

versus

HONORABLE EDWARD J. BOYLE, JUDGE,
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND/OR FOR A MANDAMUS TO THE HONORABLE EDWARD J. BOYLE, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

DONALD V. ORGAN
1750 N. B. C. Building
New Orleans, Louisiana 70112
Attorney for Petitioner

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MOTION FOR LEAVE TO FILE A PETITION FOR WRIT OF CERTIORARI

Now into court, through undersigned counsel, comes Theresa Leah Thompson, petitioner before this court

seeking issuance of a writ of certiorari and/or a writ of mandamus, who moves this honorable court for leave to file such petition in accordance with Rule 31 of the rules of this Supreme Court.

ORDER

IT IS ORDERED that Theresa Leah Thompson be allowed to file the attached petition for a writ of certiorari.

January ____, 1970.

JUSTICE, UNITED STATES
SUPREME COURT

CERTIFICATE

I certify that copies of the foregoing motion to file a petition for writ of certiorari have been mailed to the Honorable Edward J. Boyle, to the Solicitor General of the United States, and to M. Hepburn Many, Herman M. Schroeder, Breard Snellings, Richard C. Baldwin, attorneys of record in these proceedings.

January ____, 1970.

DONALD V. ORGAN
Attorney for Petitioner

PETITION FOR WRIT OF CERTIORARI AND/OR MANDAMUS OPINIONS BELOW

Theresa Leah Thompson petitions this Honorable Court for a writ of certiorari to review a judgment of the United States Court of Appeals For The Fifth Circuit rendered on October 17, 1969 and a stay order of the United States District Court for the Eastern District of Louisiana, New Orleans Division, rendered on May 29, 1969. Certified copies of the records of the district and appeals courts accompany this petition.

GROUNDS FOR JURISDICTION

The statutory provision conferring jurisdiction on this court to review the judgment of the Fifth Circuit Court of Appeals by writ of certiorari is U.S.C.A. 28:1254 (1), specifically:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

The writ of mandamus and all other necessary writs may issue under U.S.C.A. 28:1651 (a):

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Petitioner is seeking to have the judgment of the United States Court of Appeals for the Fifth Circuit rendered on October 17, 1969 and a stay order of Respondent issued May 29, 1969 reviewed by the Supreme Court inasmuch as said judgment and stay order are contrary to the law as stated by appeals courts in other circuits; the stay order exceeds the limits of discretion set out by this Supreme Court in previous cases; and Petitioner has exhausted all other remedies available to her in federal courts.

QUESTIONS PRESENTED FOR REVIEW

I

In a diversity action, over which the federal court clearly has jurisdiction, does a district judge have the discretion to stay proceedings because the same or similar actions are pending in a state court?

II

Assuming that a federal district court has the discretion to abstain from proceeding in a case over which it has jurisdiction because a similar action is pending in state court: is that discretion abused and the Constitutionally guaranteed diversity jurisdiction of the federal courts denied to litigants by the issuance of a stay order four days before trial; after having proceeded with the litigation for three years after suit was filed, and for more than one year after having heard and denied an application for a stay; after extensive trial preparation by all parties, including subpoenaing of witnesses; and when there is no pending trial on any issue in the state court?

CONSTITUTIONAL PROVISION AND STATUTES

United States Constitution

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls, to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof; and foreign States, Citizens or subjects.

Constitution, United States of America, Article III, Section 2; U.S.C.A. Constitution, Article III, Section 2, Page 209.

United States Code

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between:

(1) citizens of different States;

U.S.C.A. 28:1332 (1);
U.S.C.A., Part IV, Chapter 85, Page 2

STATEMENT OF THE CASE

Petitioners, citizens of Illinois, are the surviving widow and children of Bobbie J. Thompson who died in an automobile accident on May 28, 1965 in New Orleans, Louisiana. Pursuant to the diversity jurisdiction of the federal courts, suit was filed on May 20, 1966 against various defendants. Depositions of all parties involved were taken in November and December of 1966 and extensive trial preparations were completed.

In early 1966, Petitioners, because of a peculiar Louisiana law which strips a federal diversity suit of its prescription interrupting effect if it is dismissed for lack of federal jurisdiction, also filed suit against the same defendants in state court. Subsequently the suits of Lonnie Bilbo, Iva Wheat and Dorothy Brown, all of whom claimed damages from the same accident, and which suits had also been filed in state court, were consolidated with Petitioners' suit in federal district court. No trial date has been set in state court, and due to the crowded docket and the fact that only one month a year is set aside for jury trials in each division of state court, Petitioners cannot expect a trial in the near future. Desiring a jury trial and as early a judgment as possible, and aware of the congested dockets and the lengthy delays which would be encountered in state court, as much from necessity as by choice, Petitioners chose to press their claims in the federal forum.

On the motions of Bilbo and Wheat, the cases in which they appeared as plaintiffs in federal court were consolidated with Petitioners' suit on April 1, 1968. On

April 4, 1968, Bilbo moved to stay the entire litigation. A stay was not requested by the principal defendants, Odell Stewart, Superior Trucking Company, Inc., and Aetna Casualty and Surety Company. Only Bilbo, a plaintiff and Wheat, a plaintiff-defendant, requested a stay.

When the Respondent denied the motion for stay on May 3, 1968, Petitioners' confidently resumed their trial preparations. Two pre-trial conferences were held; one on March 12, 1968 and one on December 31, 1968. At this second conference the district court ordered that discovery be completed by April 30, 1969, that an amended pre-trial order be filed by May 26, 1969, and that trial be held on June 2, 1969.

Then, at a pre-trial conference called by the court on May 29, 1969, just four days before trial, the court, on its own motion, stayed all proceedings in the federal court for substantially the same reasons advanced by Bilbo in April, 1968, and which had been found inadequate at that time. The petitioner applied to the Fifth Circuit for a mandamus to set aside the stay. It was denied; hence this petition.

ARGUMENT

Article III, Section 2 of the United States Constitution extends the federal judicial power to controversies between citizens of different states. U.S.C. 28:1332 reaffirms this constitutional guarantee of access to the federal courts excluding from diversity jurisdiction only those cases where the matter in controversy does not exceed $10,000.00 exclusive of interest and costs.

In entertaining diversity cases the United States District Court is responding to a Constitutional demand made effective by congressional action, and it has a Constitutional duty to hear and adjudicate. *Meredith vs. Winter Haven,* 320 U.S. 228, 64 S.Ct. 7, 88 L.Ed. 9 (1943); *Monarch Insurance Company of Ohio vs. Spach,* 281 F.2d 401, 5th Cir. (1960).

In *Mach-Tronics, Inc. vs. Zirpoli,* 316 F.2d 820, at 824, the Court stated:

> It has long been recognized that when a federal court is properly appealed to in a case over which it has by law, jurisdiction, it is its duty to take such jurisdiction. Willcox vs. Consolidated Gas Company, 212 U.S. 19, 40, 29 S.Ct. 192, 53 L.Ed. 382; Meredith vs. City of Winter Haven, 320 U.S. 228, 234, 64 S.Ct. 7, 88 L.Ed. 9; Propper vs. Clark, 337 U.S. 472, 69 S.Ct. 1333, 93 L.Ed. 1480, Allegheny County vs. Frank Mashuda, 360 U.S. 185, 188-189, 79 S.Ct. 1060, 3 L.Ed. 2d, 1163. It has also been considered to be the rule that when a federal court is presented with a case of which it has cognizance, it may not turn the matter over for adjudication to the state court, and that the pendency of an action in the state court is no bar to the proceedings concerning this same matter in the federal court. McClellan vs. Carland, Supra, 217 U.S. pp. 281-282, 30 S.Ct. 501.

In *Meredith vs. Winter Haven,* 320 U.S. 228, 64 S.Ct. 7, 88 L.Ed. 9, this Honorable Court expressed the opinion that:

> The diversity jurisdiction was not conferred for the benefit of the federal courts or to serve their convenience. Its purpose was generally to afford to suitors an opportunity in such cases, *at their option*, to assert their rights in the federal rather than in the state courts. (Emphasis added).

Pendency of a suit in a state court does not deprive a federal court of jurisdiction, *Hunt vs. New York Cotton Exchange,* 205 U.S. 322, 27 S.Ct. 529, 51 L.Ed. 821; and it is well established that where the judgment sought in a federal and in a state court of concurrent jurisdiction is strictly in personam, both courts may proceed with the litigation, at least until judgment is obtained in one court which may be set up as res judicata in the other. *Mandeville vs. Canterbury,* 318 U.S. 47, 63 S.Ct. 472, 87 L.Ed. 605.

Abstention by a federal court, pending the outcome of an action in a state court, is appropriate only under exceptional circumstances and is not to be used to impede the normal course of action where the federal courts have been granted jurisdiction in the controversy. *Propper vs. Clark,* 337 U.S. 472, 69 S.Ct. 1333, 93 L.Ed. 1480. If we apply all of the declared rules relating to abstention, to the matter here in question, the obvious conclusion is that absolutely no basis for staying the federal court proceeding is present. No federal or state constitutional or statutory questions are present. No state is a party. No public official or agency will be affected by the result. There is no danger of conflict with the state public policy or of interference by the federal court with any state concerns and har-

monious federal-state relationships will in no way be disturbed. The suits in question are in law, not in equity, and the only decisions required are on questions of fact.

As pointed out in *Lutes vs. U.S. District Court for the Western District of Oklahoma*, 306 F.2d 948 (1962), mere identity of issues is not sufficient cause for a stay of proceedings:

> If we were to forego the exercise of the properly invoked diversity jurisdiction until state court decisions were obtained on identical facts, then the doctrine of abstention is extended far beyond any limits which have as yet been fixed by the Supreme Court of the United States and an easy method is afforded the district courts for the avoidance of decisions in difficult cases. pp. 949-950.

The purpose of Bilbo filing suit on March 8, 1968 was obviously to impede and interfere with Petitioners' case, for on April 1, 1968 Bilbo moved to consolidate Petitioners' case and four days later on April 4, 1968 moved for a stay of the entire proceeding on the basis of the identity of parties and issues in both the federal and state actions, and his inability to sue Iva L. Wheat because of a lack of diversity between them. At the hearing, counsel for Traders and General Insurance Company and State Auto Mutual Insurance Company urged as a further cause for stay the likelihood that the federal proceeding would not be dispositive of all issues and that subsequent litigation in state court would be required.

Respondent, finding that these causes were insufficient to warrant a stay, denied the motion. However, when the Respondent, on his own motion, ordered a stay of the district court proceedings four (4) days before trial in May, 1969, his stated reasons for so doing were substantially those which had been urged in April of 1968 and which he had found inadequate.

As shown above the inherent power of federal courts to control the disposition of causes on their dockets is ineffective where mere identity of parties and issues in a federal and in a state action is urged as grounds for staying the federal proceeding. Even assuming that the district court would have power to grant a stay in such a case, the propriety of granting a stay must always be tested by the circumstances of each case.

A careful reading of the cases in which stay orders were upheld reveals that the fact situations were most important in determining the propriety of the orders. Of particular note is the fact that in most instances the state court proceedings had progressed significantly farther than had the federal actions at the time the stays were ordered.

In the brief supporting his Answer in the Appeals Court, Respondent proposes that:

> In the interests of the general public, a court should scrutinize its docket with a view towards economy of time, costs and effort and the avoidance of a multiplicity of suits.

In support of this proposition, he quotes from *Landis vs. North American Company*, 299 U.S. 248, 57 S.Ct. 163, 81 L.Ed. 153, as follows:

> Apart, however, from any concession, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes of its docket with economy of time and effort *for itself, for counsel, and for litigants.* How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance. (Emphasis added)

Two points are significant here. First, *Landis* doesn't say anything about looking to the interest of the "general public" in regulating dockets, rather it expressly makes the interests of the court ("itself"), "counsel" and "litigants" the paramount consideration. Secondly, it requires that these interests be "weighed" and an even balance maintained. Respondent's Answer makes no mention of the competing interests of the court, counsel and litigants, and strikes no balance among them.

A few lines below the passage in *Landis* quoted by Respondent, the court stated:

> True, the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else.

Contrary to the directives in *Landis*, supra; *Levin vs. Mississippi River Corp.*, 289 F. Supp. 353; *Hamilton Life Insurance Co. of New York vs. Republic National Life Insurance Co.*, 291 F. Supp. 225, and other cases, no "clear case of hardship or inequity in being required to go forward" was shown by any party. Moreover, there was much more than a "fair possibility" that the stay would "work damage to someone else," namely Petitioners.

In *Levin vs. Mississippi River Corp.*, supra, Judge Herlands notes that since *Landis* the issue is not the existence of the power to stay, but the propriety of using that power, and agreed that there must be a "pressing need" or a "clear case of hardship or inequity" before a court should stay proceedings before it. Many other courts adhere to this test, among the cases are: *Hamilton Life Insurance Company of New York vs. Republic National Life Insurance Company*, supra; *CMAX, Inc. vs. Hall*, 300 F.2d 265 (1962); and *Radio Corporation of America vs. Igoe*, 217 F.2d 218 (1954).

Weighing interests to determine upon which party, if any, hardship or inequity falls the hardest is, therefore, one of the most important considerations in determining the propriety or impropriety of ordering a stay.

What are the competing interests here? Nowadays the court whose docket is not in arrears is a rarity. Certainly judges should utilize all the power granted to them to dispose of cases on their dockets as quickly

as possible. However, so long as courts exist to serve litigants, the interests of those parties must necessarily be placed above any interest the court might have in regulating its docket.

> The mere fact that a court might have a great number of causes on its docket, should not, ipso facto, command the issuance of an order to stay these proceedings. *Caribbean Sales Associates, Inc. vs. Hayes Industries, Inc.*, 273 F.Supp. 598 (1967)

If crowded dockets were held sufficient cause to stay proceedings an easy method would be afforded district courts for the avoidance of decision in difficult cases, and Constitutional rights of access to federal courts thereby effectively denied.

In the present case, the stay, ordered only four (4) days before trial, benefited no one but the court itself. Four days is too short a notice for a case lower on the docket to be moved up, and the result was simply that the court eliminated the necessity of its hearing a difficult case.

We've seen above (*Lutes vs. United States District Court for the Western District of Oklahoma*) that identity of issues is insufficient grounds for granting a stay, and certainly the fact that Bilbo cannot sue Wheat in federal court should not be allowed to interfere with Petitioner's action.

Wheat is both a plaintiff and a defendant. While his claim for damages is relatively insignificant, his potential liability is great. He is not necessarily entitled to have all claims against him resolved in one trial. For that matter, there is no guarantee that all claims against him could be tried at one time, since all of the litigation has not been consolidated in state court. No one, except the Petitioner, has ever requested trial in state court. Moreover, any judgment obtained by Petitioners against Wheat in federal court would be res judicata and that claim could not be reasserted in state court.

Counsel representing Traders and General Insurance Company and State Auto Mutual Insurance Company contended at the May 1, 1968 hearing on Bilbo's motion for stay, that all issues arising out of the accident would not be concluded by the federal court proceedings and they might be required to try the balance of these matters in state court. The possibilities that these insurers would have had to litigate different issues in two different courts was not grounds for a stay. Almost any automobile accident that occurs on a highway involves some issues which cannot be litigated in federal court between some of the parties, and it is not at all unusual for parties — especially insurance companies — to be required to litigate some of the issues arising out of an accident in federal court and some in state court.

Petitioners have found no case which holds that a stay is proper simply because all issues are not susceptible of determination in federal court.

The interests of Dorothy and Earl Brown need not be considered in determining the propriety of the stay order in question, since both are deceased, and the suits against them had been dismissed because no succession representative was substituted in their stead.

On May 29, 1969 all parties were ready to go to trial. Petitioners were particularly anxious. It had been a long and trying three years since the accident out of which their claims arose. A great deal of time, effort and money had been expended by Petitioners in preparation for trial. By ordering a stay the district court effectively cancelled out much of what had been done during that three years and left Petitioners with only two remedies. The first, was a resort to the state court to face an indeterminable delay before a trial could be had, and where all the steps already taken in federal court would have to be retraced. The second remedy was a petition to the Appeals Court for a writ of mandamus vacating the stay and ordering the district court to reset trial as early as possible.

In many of the cases noted above, one of the main reasons a stay was proper was that the state court proceedings had advanced significantly farther than had the federal actions, and an earlier judgment which would be dispositive of many, if not all, of the issues was more likely in state court. There is no reason why the same rationale cannot be applied in the reverse situation which we have in the present case. While the state court proceedings are barely beyond the point of filing suit, the federal action was stayed on the eve of trial. A judgment in the district court would

leave only a few secondary issues for decision in state court. Judgment on all issues tried in the federal action would be res judicata in the state action, and it is, of course, evident that the federal court judgment could be obtained long before any state court decision.

In the recent case of *Brotherhood of Locomotive Firemen and Engineers vs. Reading Company,* 279 F.Supp. 948 (1968), the court said that:

> As a general rule the action which is first commenced would be given priority . . . However, a court should not simply ascertain which suit has been filed first and mechanically stay the later action; the more significant consideration is whether the relief sought can be more expeditiously and effectively afforded in one forum in comparison to the other. (See also *Kerostat Mfg. Co. vs. C-O Two Fire Equipment Co.,* 189 F.2d 31; *Crosley Corp. vs. Westinghouse Electric and Mfg. Co.,* 130 F.2d 474; *Mapp vs. Oxford Paper Co.,* 195 F.Supp. 414.)

Expeditious and effective relief is what Petitioners sought when they invoked the diversity jurisdiction of the U.S. District Court for the Eastern District of Louisiana and it is what they are Constitutionally guaranteed by Article III and U.S.C. 28:1332.

According to the reasoning of both the district and the appeals courts, the Respondent in this case had the power to entertain the case for a protracted period of litigation and then, because all issues arising out

of that accident could not be adjudicated in federal court, stay the proceedings for the reason that all issues could be resolved in state court. This is fallacious reasoning and far beyond the power ever granted to the district courts. It was never intended that the federal district courts should have any authority to stay proceedings over which the court had clear, uncontested jurisdiction simply because the court felt it would make a neat package to try the entire controversy in state court.

It is the Congress of the United States and not the district courts that decide what cases federal courts will hear, and the district courts have been granted discretion in only limited areas. To give the federal district courts individual discretion to stay proceedings merely because a similar or the same issue may also be tried in state court, would be a serious inroad into the diversity jurisdiction, not authorized by Congress and one which would compel extreme hardship on diversity plaintiffs, such as it has here, in having the proceedings stayed on the eve of trial after lengthy and protracted litigation, trial preparation, and expense.

The federal district court simply does not have the discretion to decide what cases it will and will not hear, with the exception of a limited number of circumstances which does not include the pendency of the same or similar issues in a state court. Alternatively, even assuming that where its diversity jurisdiction was validly invoked the federal district court would have the discretion to stay proceedings simply be-

cause the same or similar issues were pending in a state court, then this court abused that discretion by allowing the litigation to proceed for three years after its institution and more than one year after having denied a motion to stay the proceedings, thereby lulling plaintiffs into believing the matter would be tried in federal court, and also by not acting until the eve of trial after having required substantial trial preparation by the parties and after witnesses had been subpoenaed and witness fees paid.

Petitioner respectfully submits that the district court's stay order on the eve of trial and the appeals court's affirmation on the grounds of "sound administration of justice", which eradicated over three years of costly and extensive trial preparations, and which will mean a delay of perhaps a year or more before a trial can be had in state court, effectively denied her Constitutionally guaranteed right of access to the federal courts under their diversity jurisdiction.

If the stay order in question is vacated and trial is reset in the district court, any hardship which any of the parties would suffer would be negligible at most. On the other hand, if the order is not vacated, a great injustice will be done to the Petitioner.

DONALD V. ORGAN
524-7672
Attorney for Petitioner

STATE OF LOUISIANA
PARISH OF ORLEANS

AFFIDAVIT AND CERTIFICATE OF SERVICE

BEFORE ME, the undersigned authority, personally came and appeared Donald V. Organ, who after being duly sworn did depose and say:

That he is a member of the bar of this court and the attorney for Theresa Leah Thompson, petitioner in the foregoing petition for writ of certiorari; that he has prepared and read the application and that all allegations contained therein are true and correct and copies of this petition were mailed to the Honorable Edward J. Boyle and to the Solicitor General of the United States.

This service was effected by placing copies in the United States mail, postage pre-paid, to both of the aforesaid gentlemen this ____ day of January, 1970.

_____
DONALD V. ORGAN

Sworn to and subscribed
before me this ____ day
of January, 1970.

_____
NOTARY PUBLIC

CERTIFICATE

I certify that copies of the foregoing motion to file a petition for writ of certiorari have been mailed to the Honorable Edward J. Boyle, to the Solicitor General of the United States, and to M. Hepburn Many, Herman M. Schroeder, Breard Snellings, Richard C. Baldwin, attorneys of record in these proceedings.

January ____, 1970.

DONALD V. ORGAN
Attorney for Petitioner

APPENDIX A

Minute Entry
May 29, 1969
BOYLE, J.

NO. 16562

THERESA LEAH THOMPSON, ET AL

versus Civil Action
Section D

DOROTHY AND EARL BROWN, ET AL

NO. 16582

IVA LEE WHEAT, ET AL

versus Civil Action
Section D

MRS. DOROTHY BROWN, ET AL

NO. 68-472

LONNIE E. BILBO

versus Civil Action
Section D
CONSOLIDATED

DOROTHY AND EARL BROWN, ET AL

ORDER STAYING PROCEEDINGS

The motor vehicular accidents which are the subject of these personal injury actions have spawned, in addition to the actions herein, three companion suits which have been and are now pending in the Civil District Court for the Parish of Orleans, State of Louisiana. Additionally, a fourth suit is pending in the State Court which has no counterpart in this Court, no basis for jurisdiction in this Court being present. The parties in the actions, as filed in both Courts are as follows:

Federal Court
No. 16,562

Theresa and Marla Thompson, Plaintiffs

versus

Dorothy & Earl Brown and their insurer, Traders & General Ins. Co., Iva L. Wheat and his insurer, State Auto Mutual Ins. Co., Odell Stewart, and his employer, Superior Trucking Co., Inc., and their insurer, Aetna Casualty and Surety Co.

State Court
No. 449-124

Same defendants as in Federal Court action

No. 16,582

Iva L. Wheat and Volkswagon Insurance Co.

versus

Dorothy Brown and her insurer, Traders & General Ins. Co., Superior Trucking Co., Inc. and its insurer, Aetna Casualty & Surety Co.

No. 448-455

Same defendants as in Federal Court action.

No. 68-472

Lonnie E. Bilbo

versus

Dorothy and Earl Brown and their insurer, Traders & General Ins. Co., Superior Trucking Co., Inc. and its insurer, Aetna Casualty & Surety Co. (Note: State Auto Mutual Ins. Co., liability insurer of Iva L. Wheat, was originally a named defendant, but was voluntarily dismissed to avoid destruction of diversity jurisdiction.)

No.446-281

Same defendants as in Federal Court action in addition to Odell Stewart, employee of Superior Trucking Co., Inc., and State Auto Mutual Ins. Co., but excluding Earl Brown.

No Federal Court action

Dorothy and Earl Brown

versus

No. 449-323

Iva L. Wheat and his liability insurer, State Auto Mutual Ins. Co.

All causes pending in this Court were dismissed (see Minute Entry of April 16, 1969, corrected May 19, 1969) as to the defendants Dorothy and Earl Brown, deceased, for failure to substitute representatives of said defendants and as to the defendants (see Minute Entries of May 28 and 29, 1969) Traders & General Insurance Insurance Company and State Auto Mutual Insurance Company. In the State Court actions the aforesaid insurance company defendants remain parties defendant and the legal representatives of the Browns have been substituted.

The consolidated cases pending in this Court were set for trial on June 2, 1969 at pre-trial conference held on December 31, 1968 at which time it was anticipated that the State Court cases would be tried in the February, 1969 jury term of that Court. However, the cases were not reached. The Court understands that some of the State Court actions have been consolidated and there appears no reason why all should and could not be consolidated.

At the request of counsel, the Court set and held a further conference herein on May 29, 1969. Considering the following:

(a) the dismissal of the defendants as aforesaid,

(b) that trial of these causes in this Court would not dispose of all pending litigation,

(c) the likelihood that even after trial of these causes in this Court certain of the State Court cases would have to be tried in that Court (e.g. the plaintiff Bilbo cannot pursue his claim against Wheat and his insurer, State Auto Mutual Insurance Company, in this Court, because of lack of diversity, but may do so in State Court regardless of the result of trial in this Court),

(d) the parties dismissed in these causes would remain parties defendant in the State Court actions and trial thereof would dispose of all litigation pending in both Courts,

(e) the facts that if tried in the State Court and the insureds of Traders & General Insurance Company and State Auto Mutual Insurance Company are found liable, an equitable division of the funds available under the policies issued by said insurers ($10,000/$20,000 limits in each) would more likely be best handled by the State Court, and

(f) that the cases may be reached at the State Court's fall jury term;

this Court concluded that it would be in the interest of justice for all parties and would avoid a multiplicity of trials, with the monetary and court time expense attendant thereto, if further proceedings herein were held in abeyance.

Accordingly, IT IS ORDERED that further proceedings herein be, and they are hereby, stayed until the further orders of this Court.

IT IS FURTHER ORDERED that the trial of these causes now set for June 2, 1969 be continued without date.

Donald V. Organ, Esq.
M. Hepburn Many, Esq.
Herman M. Schroeder, Esq.
Breard Snellings, Esq.
Lawrence L. Lagarde, Esq.
Richard C. Baldwin, Esq.
Robert L. Lobrano, Esq.
Robert Ryan, Esq.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 27,997

THERESA LEAH THOMPSON, ET AL,
Petitioners,

versus

HONORABLE EDWARD J. BOYLE, Judge,
United States District Court, Eastern
District of Louisiana, New Orleans Division,
Respondent.

Petition for Writ of Mandamus to the
United States District Court
for the Eastern District of Louisiana

(October 17, 1969)

Before BROWN, Chief Judge, JONES and CARSWELL,
Circuit Judges.

CARSWELL, Circuit Judge: The petitioner challenges by mandamus the district court's determination

that a three car collision diversity action be stayed pending disposition of a parallel action pending in the courts of Louisiana.

The petition will be denied for it is clear that the ends of sound administration of justice are more likely to be served than obviated by the action taken under the circumstances of this case.

The first suit was filed in the state courts of Louisiana in accordance with what we are advised is rather traditional procedure in Louisiana. Its parallel counterpart was not long forthcoming in the federal arena. To a number of nominal parties were added their insurers under Louisiana's direct action statute. Other suits involving other plaintiffs and defendants and their insurers proliferated in due course in both the federal and state forums. Thus the dockets of the two courts reflect a number of actions in each. The litigation proceeded in each forum with sporadic forays of rulings on motions preliminary to the day of ultimate trial in one or the other or both. In a district which we must note has one of the heaviest caseloads in the entire federal system, the consolidated federal actions were noticed for trial some three years after the initial filing. At that point the state actions were pending and dormant. Shortly before the scheduled trial and following a routine pretrial conference the district court stayed its proceedings pending action by the state court. At that time, and apparently for the first time, it became clear to the court that a number of original parties were no longer before it. Two primary parties had died and there had been no substitution of personal representa-

tives for either in the federal action although it appears that personal representatives had been substituted in the state actions. Additionally, in the federal actions some parties insurers had atrophied by dismissal for lack of the requisite jurisdictional amount as provided by 28 U.S.C. § 1332. Complete disposition in one trial of the various issues was impossible in federal court.

While the Second and Fourth Circuits have adopted the rule that it is not an abuse of the district courts' discretion to stay proceedings in diversity cases if there is a prior action involving the same dispute,[1] we need not here express full accord with such holding in order to deny the relief sought in this case. There should be no short shrift of litigants who are properly before the federal forum of their choice without compelling reasons. Here, however, we cannot say that there was an abuse of discretion to stay the federal actions which would at best conclude only a portion of the controversy.

The law as well as equity delights to do justice and that not by halves.

The petition is DENIED.

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[1]Milk Drivers' and Dairy Employees' Union v. Dairymen's League Co-op Association (2nd Cir. 1962), 304 F.2d 915; Amdur v. Lizars (4th Cir. 1967), 372 F.2d 103.

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